SINGAPORE REPORT

WEE TOON BOON v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) July 13, 1976]
[Singapore — Magistrate's Appeal No. 180 of 1975]

Criminal Law and Procedure — Appeal — Charge — Particulars not stated — Accused not misled by omission — Whether appellate court can alter or amend charge — Criminal Procedure Code (Cap. 113), ss. 155 and 246.

Bribery and Corruption — Charges under Prevention of Corruption Act — Meaning of "agent" — Whether Minister an agent of Government — "Dealing" with Government — Statutory presumption — Burden of proof to rebut presumption — Prevention of Corruption Act (Cap. 104), ss. 2, 6(a) and 8.

In this case the appellant appealed against his conviction on five charges of corruption. The facts as found by the learned District Judge showed that the appellant, who had since 1965 held ministerial office, had beginning from November 1970 until October 1974 personally interceded on many occasions with civil servants in various departments of government and on one occasion with a fellow Minister on behalf of a wealthy Indonesian citizen, Lauw, or Lauw's company in connection with matters which these civil servants were dealing with. These intercessions were not made at the direct request of Lauw but at the request of Ong Keng Kok, a friend whom he had known since school, the secretary and a director and the person in charge of the day to day running of the business of Lauw's company. The matters in which the appellant interceded were promptly considered and decided and in one instance in which the decision was an adverse one, the appellant interceded still further with eventually a favourable result. It appeared to be the common practice for Members of Parliament to communicate direct with civil servants on behalf of the members of the public within their respective constituencies. During the period 1972 to the end of 1974 Lauw's company paid for the cost of new galvanised roofing for the appellant's house; Lauw and his company guaranteed to the extent of $300,000 the overdraft of the appellant's father with a bank, the overdraft facilities being for shares purchased by the appellant in the name of his father; Lauw's company offered and the appellant agreed to accept a bungalow house to be built by Lauw's company valued at $532,000 and lastly Lauw paid for the cost of seven return air fares to Jakarta when the appellant flew to Jakarta with his family for a holiday as Lauw's guest.

On appeal it was contended (1) that the appellant as a Minister of State was not an "agent" within the meaning of section 6(a) of the Prevention of Corruption Act as defined in section 2 of the Act; (2) the gratifications in this case were not paid or given or received from a person or agent of a person who had or sought to have any "dealing" with the Government or any department thereof; (3) that the District Judge should have found that the appellant had discharged the burden of proof which lay upon him to prove that the gratifications had not been accepted by him corruptly as rewards for acts done in relation to the affairs or business of the Government; (4) that the District Judge was wrong in holding that the representations made by the appellant were in relation to the principal's affairs or business; (5) that the charges were defective for lack of essential particulars.

It was also contended by the appellant and conceded on behalf of the Public Prosecutor that the conviction of the appellant on the fourth charge that he did corruptly "accept" the bungalow could not be supported but it was contended that the court could substitute a conviction on the charge of "did corruptly agree to accept" the bungalow, which was the original charge, before it was amended by the trial court.

Held: (1) where a person is charged with an offence under section 6(a) of the Prevention of Corruption Act and the prosecution seeks to rely on the presumption embodied in section 8 of the Act, the burden lies on the prosecution to prove the following factual ingredients of the offence namely (a) that a gratification was paid or given to or received by the accused; (b) that at the time of the payment, gift or receipt he was in the employment of the Government or any department thereof or of a public body; (c) that the payment, gift or receipt was from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body. Upon proof of these three ingredients the existence of the fourth ingredient namely that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of the Government or a department thereof or a public body as the case may be, is to be presumed until the contrary is proved;

(2) the question whether the appellant was an "agent" within the meaning of section 2 of the Prevention of Corruption Act and for the purposes of section 6(a) of the Act has to be determined by construing the words of the sections and by applying the sections to the holder of the office of a Minister, appointed by the President on the advice of the Prime Minister, under the Constitution. The definition of "agent" in section 2 covers a person who is employed by another or who is acting for another or who is serving the Government. In the performance of his duties as a Minister of State the appellant was clearly acting for the Government, it being necessary for the Government to exercise its functions through some human agency and in receiving remuneration for the performance of his duties and the discharge of his responsibilities as a Minister he was clearly a person serving or employed by the Government and accordingly he fell within the definition of "agent" in the Act;

(3) the expression "any dealing with the Government or any department thereof" in section 8 of the Act means "any matter of the Government or any department thereof." In this case there could be no reasonable doubt that the gratifications were paid or given by or received from a person or agent of a person who had at the material time dealings with one or more departments of the Government;

(4) in this case on the evidence and having regard to the findings of fact by the trial judge, the appellant had failed to prove that he had legitimate reasons for accepting the gratifications;

(5) the words "in relation to the principal's affairs or business' in section 8 of the Act must be given a wide construction and it was a question of fact whether the acts fell within those words. In this case the appellant's acts were clearly in relation to the affairs or business of the government;

(6) the conviction on the fourth charge was wrong and ought to be set aside. Section 246 of the Criminal Procedure Code did not give power to the appellate court to alter or amend a charge;

(7) although the charges in this case did not give certain particulars, there was nothing to show that the appellant was misled by the omission or that it prejudiced the defence;

(8) the sentences imposed by the trial judge on the 1st, 2nd, 3rd and 5th charges were not excessive.

Case referred to:—

(1) *Public Prosecutor* v. *Yuvaraj* (1969) 2 M.L.J. 89.

MAGISTRATE'S APPEAL.

J. Newey Q.C. (*M. Rubin* with him) for the appellant.

Abdul Wahab Ghows, Solicitor-General, (*Loh Lin Kok*, D.P.P. with him) for the respondent.

Wee Chong Jin C.J.: The appellant, Wee Toon Boon, was tried in the First District Court on the following five charges: —

First Charge:

"You, Wee Toon Boon, are charged that you, on or about May 5, 1972 at No. 33 Greenmead Avenue, Singapore, being an agent, to wit, Minister of State in the Ministry of Defence of the Republic of Singapore, did corruptly accept from one Ong Keng Kok, the Director-cum-Secretary of Messrs. Lauw & Sons Pte. Ltd., for yourself a gratification, to wit, galvanised roofing constructed at your house at No. 33 Greenmead Avenue, Singapore, valued at Dollars Three Thousand and Five Hundred ($3,500) as a reward for doing acts in rela-

tion to your principal's affairs, to wit, making representations to civil servants on behalf of one Atang Latief alias Lauw Tjin Ho, the Chairman of the above-mentioned company with the knowledge that such representations by a Minister of State on behalf of the said Atang Latief alias Lauw Tjin Ho for the latter's benefit would receive special consideration by such civil servants, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Second Charge:

"You, Wee Toon Boon, are charged that you, on or about January 16, 1973 in the office of Messrs. Lauw & Sons Pte. Ltd. at No. 408-A, People's Park Complex, New Bridge Road, Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly obtain from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., through one Ong Keng Kok, the Director-cum-Secretary of the same company, for your father, one Wee Kok Kwang, a gratification, to wit, a personal guarantee from the said Atang Latief alias Lauw Tjin Ho as security for an overdraft of up to Dollars Two Hundred Thousand ($200.000) granted to your father for the purchase of shares through your father's account with the Chase Manhattan Bank, Singapore, as a reward for doing acts in relation to your principal's affairs, to wit, making representations to civil servants on behalf of the said Atang Latief alias Lauw Tjin Ho with the knowledge that such representations by a Minister of State on behalf of the said Atang Latief alias Lauw Tjin Ho for the latter's benefit would receive special consideration by such civil servants, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Third Charge:

"You, Wee Toon Boon, are charged that you, on or about April 14, 1973 in the office of Messrs. Lauw & Sons Pte. Ltd. of No. 408-A, People's Park Complex, New Bridge Road, Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly obtain from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., through one Ong Keng Kok, the Director-cum-Secretary of the same company, for your father, one Wee Kok Kwang, a gratification, to wit, a guarantee from Messrs. Lauw & Sons Pte. Ltd., as security for an overdraft of up to Dollars One Hundred Thousand ($100,000) granted to your father for the purchase of shares through your father's account with the Chase Manhattan Bank, Singapore, as a reward for doing acts in relation to your principal's affairs, to wit, making representations to civil servants on behalf of the said Atang Latief alias Lauw Tjin Ho with the knowledge that such representations by a Minister of State on behalf of the said Atang Latief alias Lauw Tjin Ho for the latter's benefit would receive special consideration by such civil servants, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Fourth Charge:

"You, Wee Toon Boon, are charged that you, one day in August, 1973 in Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly agree to accept from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., through one Ong Keng Kok, the Director-cum-Secretary on the same company, for yourself a gratification, to wit, a two-storey bungalow house and land at Plot 18 in the housing estate known as Lauw & Sons Garden at Jalan Binchang, Singapore, valued at Dollars Five Hundred and Thirty Two Thousand ($532,000) as a reward for doing acts in relation to your principal's affairs, to wit, making representations to civil servants on behalf of the said Atang Latief alias Lauw Tjin Ho with the knowledge that such representations by a Minister of State on behalf of the said Atang Latief alias Lauw Tjin Ho for the latter's benefit would receive special consideration by such civil servants, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Fifth Charge:

"You, Wee Toon Boon, are charged that you, on or about December 20, 1974 in Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly accept from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., through one Ong Keng Kok, the Director-cum-Secretary of the same company, for yourself a gratification, to wit, seven air tickets for travel to Jakarta, Indonesia and return, worth in all Dollars Three Thousand Five Hundred and Twenty Three ($3,523) as a reward for doing acts in relation to your principal's affairs, to wit, making representations to civil servants on behalf of the said Atang Latief alias Lauw Tjin Ho with the knowledge that such representations by a Minister of State on behalf of the said Atang Latief alias Lauw Tjin Ho for the latter's benefit would receive special consideration by such civil servants, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

At the close of the case for the prosecution and after hearing submissions on behalf of the appellant and the Public Prosecutor the trial judge amended all the five charges and called the appellant, who pleaded not guilty to the amended charges, to enter upon his defence. The five amended charges read as follows: —

Amended First Charge:

"You, Wee Toon Boon, are charged that you, on or about May 5, 1972 at No. 33 Greenmead Avenue, Singapore, being an agent to wit, Minister of State in the Ministry of Defence of the Republic of Singapore, did corruptly accept from Messrs. Lauw & Sons Pte. Ltd., for yourself a gratification, to wit, galvanised roofing constructed at your house at No. 33 Greenmead Avenue, Singapore, valued at Dollars Three Thousand and Five Hundred ($3,500) as a reward for doing acts in relation to your principal's affairs, to wit, making representations to persons in authority, on behalf of one Atang Latief alias Lauw Tjin Ho, the Chairman of the above-mentioned company, for the benefit of his affairs, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Amended Second Charge:

"You, Wee Toon Boon, are charged that you, on or about January 16, 1973 in the office of Messrs. Lauw & Sons Pte. Ltd., at No. 408-A, People's Park Complex, New Bridge Road, Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly accept from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., a gratification to wit, a guarantee, in the name of your father, Wee Kok Kwang, from the said Atang Latief alias Lauw Tjin Ho as security for an overdraft of Dollars Two Hundred Thousand ($200,000) for the purchase of shares by you through your father's account with the Chase Manhattan Bank, Singapore, as a reward for doing acts in relation to your principal's affairs, to wit, making representations to persons in authority, on behalf of the said Atang Latief alias Lauw Tjin Ho, for the benefit of his affairs, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Amended Third Charge:

"You, Wee Toon Boon, are charged that you, on or about April 14, 1973 in the office of Messrs. Lauw & Sons Pte. Ltd., of No. 408-A, People's Park Complex, New Bridge Road, Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly accept from Messrs. Lauw & Sons Pte. Ltd., a gratification, to wit, a guarantee from Messrs. Lauw & Sons Pte. Ltd., in the name of your father, Wee Kok Kwang, as security for an overdraft of Dollars One Hundred Thousand ($100,000) for the purchase of shares by you through your father's account with the Chase Manhattan Bank, Singapore, as a reward for doing acts in relation to your principal's affairs, to wit, making representations to persons in authority, on behalf of one Atang Latief alias Lauw Tjin Ho, the Chairman of the above-mentioned company, for

the benefit of his affairs, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Amended Fourth Charge:

"You, Wee Toon Boon, are charged that you, one day in August, 1973 in Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly accept from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., for yourself a gratification, to wit, a two-storey bungalow house and land at Plot 18 in the housing estate known as Lauw & Sons Garden at Jalan Binchang, Singapore, valued at Dollars Five Hundred and Thirty Two Thousand ($532,000) as a reward for doing acts in relation to your principal's affairs, to wit, making representations to persons in authority, on behalf of the said Atang Latief alias Lauw Tjin Ho, for the benefit of his affairs, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

Amended Fifth Charge:

"You, Wee Toon Boon, are charged that you, on or about December 20, 1974 in Singapore, being an agent, to wit, Minister of State for the Environment in the Ministry of the Environment of the Republic of Singapore, did corruptly accept from one Atang Latief alias Lauw Tjin Ho, the Chairman of Messrs. Lauw & Sons Pte. Ltd., for yourself a gratification, to wit, seven air tickets for travel to Jakarta, Indonesia, and return, worth in all Dollars Three Thousand Five Hundred and Twenty Three ($3,523) as a reward for doing acts in relation to your principal's affairs, to wit, making representations to persons in authority, on behalf of the said Atang Latief alias Lauw Tjin Ho, for the benefit of his affairs, and you have thereby committed an offence punishable under section 6(a) of the Prevention of Corruption Act (Chapter 104)."

At the conclusion of the trial the trial judge convicted the appellant on each of the five amended charges and sentenced him as follows: —

First Charge:	Six months' imprisonment.
Second Charge:	Six months' imprisonment to run consecutively to the sentence on the First Charge.
Third Charge:	Six months' imprisonment to run concurrently with the sentence of the Second Charge.
Fourth Charge:	Three years' imprisonment to run consecutively to the sentences on the First and Second Charges.
Fifth Charge:	Six months' imprisonment to run consecutively to the sentences on the First, Second and Fourth Charges.

The trial judge also imposed a penalty of $7,023. The appellant now appeals against the convictions and sentences. The facts which were not in dispute and the facts as found by the trial judge are as follows.

The appellant is and since 1959 has been a Member of Parliament. In 1965 he was appointed a Minister by the President under Article 9 of the Constitution of Singapore and designated as Minister of State in the Ministry of Defence and in September 1972 he was designated as Minister of State in the Ministry of the Environment. While still in school he came to know a fellow student, Ong Keng Kok, a principal prosecution witness and their friendship ripened when both were employed in the City Council. He resigned from his employment in the City Council in 1957 to stand for election to the City Council as a City Councillor and was duly elected. Ong Keng Kok had also ceased working in the City Council and in 1970 was a director and secretary of Lauw & Sons (Pte) Ltd., a company owned by Atang Latief alias Lauw Tjin Ho (hereinafter referred to as "Lauw"), another principal prosecution witness, and members of his family.

The paid-up capital of Lauw & Sons (Pte) Ltd. is $10 million and they are housing developers, commission agents and importers and exporters of commodities. Ong Keng Kok is in charge of the day to day running of the business of the company. Lauw is an Indonesian citizen, Chinese by race, and in August 1970 had applied for permanent residence in Singapore on grounds of economic benefit. Lauw's application was prepared by and handled on his behalf by Ong Keng Kok. Subsequently Ong Keng Kok requested the appellant's help saying that Lauw was anxious over his application for permanent residence and the appellant promised to look into the matter. The appellant telephoned on November 11, 1970 to the then Ag. Controller of Immigration, who was a member of the Review Committee dealing with such applications, and enquired about Lauw's application. Following the appellant's request the Ag. Controller telephoned another government department stating that the appellant was enquiring about the application and was informed that the processing was at the final stage. Thereupon the appellant requested the Ag. Controller to ask the Secretary of the Review Committee to send the approval letter to the appellant "in the next day or two".

On December 8, 1970 the appellant again telephoned the Ag. Controller of Immigration, a different officer who had replaced the officer who was previously acting as Controller, enquiring about Lauw's application. The Ag. Controller, after looking at the relevant file, informed the appellant that he could not issue the approval certificate as no confirmation letter had been received from the Economic Development Board. Six days later, on December 14, 1970 the approval certificate was issued.

On February 3, 1972 the police arrested Tjhe Sui Tseng, a female Indonesian suspected to be an illegal immigrant from Indonesia at 17 Maple Road, the residence of Ong Keng Kok. On the same day the appellant telephoned F. Sabapathy, the then Ag. Senior Assistant Controller of Immigration, requesting that the suspected illegal immigrant be released to her employer, Ong Keng Kok, for repatriation. When the appellant telephoned Sabapathy, the suspected illegal immigrant was still in police custody. That evening the police handed the suspected illegal immigrant to the Immigration authorities who immediately released her into the custody of Ong Keng Kok. She was subsequently given a special pass valid for one month and eventually repatriated on April 15, 1972. Before she left Singapore, the appellant telephoned the Senior Deputy Assistant Controller of Immigration on March 22, 1972 suggesting that Tjhe be granted one final month's extension as "the boatman who was to convey her to Indonesia" had been arrested by an Indonesian patrol boat. The request was granted as it came from the appellant.

In September 1972 the appellant telephoned Ong Kian Chong, Assistant Controller of Immigration requesting the release of another suspected illegal immigrant Chng Suat Hong who had been arrested at 23 Fifth Avenue off Bukit Timah Road, the residence of Mrs. Lauw. Ong Kian Chong referred the request to Sabapathy who discovered that Chng was an illegal immigrant from Indonesia. He telephoned giving the facts of the case to the appellant who requested that Chng be released for one month for repatriation. In view of the appellant's request and on Sabapathy's instructions Chng was released on a special pass for one month to be repatriated, on payment of a deposit of $500 as security and a letter of guarantee from Lauw & Sons (Pte) Ltd. Sabapathy said that he would not normally give those instructions in the case of illegal immigrants and that in Chng's case he was not intending to prosecute Chng.

Between July and December 1974 the appellant on a few occasions telephoned Loh Hung Mong, an Assistant Controller of Immigration in charge of the Visit and Visa Section to inform him that Ong Keng Kok would be seeing him in respect of applications by Indonesians for extension of their visit passes.

In August 1971 Lauw & Sons (Pte) Ltd., developers of a housing project at Jalan Binchang submitted lay-out plans for building 169 units of houses, to the Chief Planner, Development Controller Division, Ministry of National Development for approval. During the latter part of October 1971 Mr. Danaraj of the Planning Department received a telephone call from the appellant stating that the appellant would like to see him. A few days later the appellant and Ong Keng Kok saw Mr. Danaraj at the latter's office and asked Mr. Danaraj whether there was a possibility that high-rise flats would be introduced amidst the housing estate in the Jalan Pemimpin/Jalan Binchang area.

On November 11, 1971 a letter signed by Mr. Danaraj for the Chief Planner, Planning Department was sent to the architects stating that "the proposal is approved subject to compliance to all technical requirements" and requesting the architects to call by prior appointment to discuss the technical requirements. The letter ended as follows: — "As soon as all the requirements have been complied with, a Written Permission will be released". The plans were finally approved by the Planning Department on March 27, 1972.

In July 1972 the architects wrote to the Senior Executive Engineer, Parks and Trees Branch, P.W.D. for approval to remove all existing trees on the site to enable preliminary work to commence. In December 1972 the Department replied requiring, *inter alia*, four tembusu trees to be retained. In March 1973 the appellant telephoned Chong Toh Goo the then Senior Executive Engineer, Parks and Trees Branch, P.W.D. to go to the site. An appointment was made for March 29, 1973 and that day at the site Chong Toh Goo met the appellant and Ong Keng Kok. The four tembusu trees in question were on a mound about 8 feet above the surrounding area which had been cleared and levelled. Chong Toh Goo was asked whether he could allow the trees to be cut down or transplanted elsewhere. He readily agreed as it was obvious to him that it was impracticable and dangerous to insist on the trees remaining there and he suggested that they be transplanted at the expense of the developers. Eventually this was done.

In November 1972 Lauw & Sons (Pte) Ltd. applied to the Controller of Housing for a Housing Developer's Licence under section 4(2) of the Housing Developers (Control and Licensing) Ordinance, 1965. The application was first dealt with by Koh Lian Choon who was then Higher Executive Officer attached to that branch of the Ministry of National Development. On November 17, 1972 the appellant telephoned Koh Lian Choon enquiring the position with regard to the application and was told that the application had been processed and submitted to Koh Lian Choon's senior officer. The application was approved by the Ag. Controller of Housing on the same day and a letter dated November 18, 1972 was sent to the applicant approving the application subject to certain conditions. In December 1972 the appellant telephoned the Ag. Controller of Housing stating that a director/secretary of Lauw & Sons (Pte) Ltd. would like to see him for clarification of certain points in connection with the letter of approval. Subsequently Ong Keng Kok saw the Ag. Controller of Housing on December 15, 1972 asking for a slight variation in one of the conditions. The Ag. Controller, in the light of the reasons advanced to him, agreed to the request and on December 18, 1972 issued a Developer's Licence to Lauw & Sons (Pte) Ltd.

In early 1973 David Chow, Senior Executive Engineer attached to the Sewerage Department of the Ministry of the Environment was asked by the appellant why "such a big-sized pumping station" was required to be built for Lauw & Sons (Pte) Ltd.'s housing estate. David Chow explained this could be best explained to the developers and their engineer involved in the project. The appellant arranged a meeting between David Chow and Ong Keng Kok and Tay Keng Yaw the consultant engineer for the housing project. The Sewerage Department required the pumping station to have pumping capacity to cater for 6,000 persons. The consultant engineer considered that the capacity need only be for between 1,500 to 2,000 persons for the proposed 169 housing units but at the meeting failed to persuade David Chow to reduce the capacity. In early 1974 the appellant again telephoned David Chow enquiring why the Sewerage Department was taking such a long time to approve the pumping station and was told that the delay was due to the fact that there had not been full compliance with the Department's requirements. A month later approval was given.

In the latter part of 1974 the appellant again telephoned David Chow to enquire why a minor sewer line had to be constructed so deep below ground in the housing estate. David Chow suggested this could be explained to the developers and their engineer. Subsequently at a meeting with Ong Keng Kok and the consultant engineer David Chow explained the reason why and did not waive the requirement but allowed the developers to change the direction of certain sewer lines which he considered reasonable.

One Sunday in the latter part of 1973 the appellant and Ong Keng Kok went to the office of the Management Committee of the Peck San Teng Cantonese Cemetery off Thomson Road. The office was at the cemetery and the cemetery was adjacent to the housing project of Lauw & Sons (Pte) Ltd. At that time the Management Committee was holding a meeting chaired by its chairman Koh Yoke Chuan who knew the appellant personally but not Ong Keng Kok who was introduced to the committee members as the secretary of the company which were developing a housing estate next to the cemetery. Ong Keng Kok told the committee members that the developers' surveyor had surveyed the developers' land and discovered that some graves had encroached on it. The Management Committee then appointed their own surveyor who confirmed the encroachment and the committee met and approved the return of the encroached land and also the exhumation of the graves on the encroached land. Lauw & Sons (Pte) Ltd. agreed to donate to the Peck San Teng Association $15,000 towards the cost of the exhumation. As special permission from the authorities was required to exhume graves the chairman and two members of the Management Committee approached the appellant and requested his assistance.

At the end of 1973 Nah Whee Tuan, then Senior Public Health Inspector in charge of cemeteries section of the Ministry of the Environment was called by the appellant to his office. There he saw Ong Keng Kok and one or two other persons present. The appellant enquired about the administrative policy with regard to exhumation of graves in licensed and registered cemeteries and told the officer that in the past years there had been accidental encroachment by the Peck San Teng Cantonese Cemetery on the land adjacent to it owned by Lauw & Sons (Pte) Ltd. Between January and February 1974 the officer was called to the appellant's office and shown, in the presence of Ong Keng Kok and a representative of the Peck San Teng Cantonese Cemetery, a plan showing the encroachment and was asked what should be done to have the graves on the encroached land exhumed for building purposes. He told the appellant it was necessary that plans drawn by a chartered surveyor showing the encroachment be submitted and that a formal application should be made for a special exhumation licence. On February 15, 1974 a formal application by the Peck San Teng Cantonese Cemetery was made and approved the same day when it was established after processing that the graves were on encroached land.

On February 21, 1974 the Works Permit Office received an application by Madam Lie Pung May an Indonesian citizen for a Work Permit to be employed as a domestic servant by Mrs. Lauw. The processing of the application was in the hands of Tay Teck Keng who was then an Administrative Assistant attached to the Works Permit Office. The appellant telephoned Tay Teck Keng over this application and also introduced Ong Keng Kok to Tay Teck Keng in connection with this application. After processing, the application was dealt with by Wong Hong King, the then Ag. Assistant Secretary at the Works Permit Office. The appellant telephoned Wong Hong King in June 1974 asking when the application could be approved and was told that there was no merit in it and that Wong Hong King intended to reject it. On being told this the appellant requested Wong Hong King to delay sending the letter of rejection as he would be speaking to the Minister of State for Labour. The matter was accordingly held back until 2 to 3 weeks later when Wong Hong King telephoned the appellant and asked whether he had spoken to the Minister of State for Labour on the case. The appellant again told him to hold on to the file. Subsequently on August 9, 1974 Wong Hong King rejected the application as there was no merit in it.

However, on August 30, 1974 the appellant went to the Works Permit Office and spoke to the Ag. Higher Executive Officer, Tan Kim Khim who made a note of the information the appellant gave about the applicant and her employer, Mrs. Lauw and referred the note for the consideration of the Assistant Secretary, Foo Shiang Hui. On September 6, 1974 the appellant telephoned Foo Shiang Hui on the application and requested Foo Shiang Hui to hold on to the file as he would be taking up the matter with Mr. Sia Kah Hui, the Minister of State for Labour. On October 18, 1974 the appellant telephoned Foo Shiang Hui and requested him to send the file to Mr. Sia Kah Hui to whom he had spoken. The file was sent on October 19 to Mr. Sia Kah Hui who sent the file to the Minister for Labour. After additional facts about the employer had been obtained the Minister for Labour personally approved the application.

In April 1972 the appellant who lives in his own house at No. 33 Greenmead Avenue, which was at the time being extensively renovated, asked Ong Keng Kok to arrange for Ong Keng Kok's contractor to put up a new galvanised roofing for his house. Ong Keng Kok instructed his contractor, Ng Soh to carry out the work. No price was fixed nor was Ng Soh told who was to pay for it. After the work was completed Ng Soh telephoned Ong Keng Kok, told him that the work cost $3,500 and was instructed to make out the bill and send it to Lauw & Sons (Pte) Ltd. Soon after the bill was sent the contractor received a cheque from Lauw & Sons (Pte) Ltd. in payment.

In December 1972 the appellant asked Ong Keng Kok to purchase shares for him in the name of his father, Wee Kok Kwang. The payment for shares so purchased would be made through the Chase Manhattan Bank in which his father had an account under the name of K.K. Wee. Ong Keng Kok told the appellant that the firm of sharebrokers, Ong & Co., through whom Ong Keng Kok purchased shares, would require a guarantee for purchases made through them. The appellant then asked Ong Keng Kok whether Lauw or Lauw & Sons (Pte) Ltd. could provide the guarantee. Ong Keng Kok spoke to Lauw who agreed to provide security for the account in the name of K.K. Wee for $300,000. At that time although Lauw did not know the appellant or his father personally, Lauw had been told by Ong Keng Kok about the help the appellant had given in connection with Lauw's

company, his family and his servants. Accordingly, Ong Keng Kok arranged with the Chase Manhattan Bank to accord overdraft facilities to the appellant's father up to $200,000 and Lauw signed the Letter of Guarantee on January 16, 1973.

In March 1973 Ong Keng Kok was told by the bank that the overdraft of the appellant's father had exceeded $200,000 and he informed the bank that Lauw & Sons (Pte) Ltd. would provide a further guarantee of up to $100,000 and instructed the bank to prepare and forward to him the guarantee. When Ong Keng Kok received the guarantee the directors of Lauw & Sons (Pte) Ltd. passed a resolution authorising the company to stand guarantee for the account of the appellant's father with the bank for $100,000. The resolution was dated April 3, 1973 and the guarantee was signed and dated April 14, 1973.

In August 1973 Ong Keng Kok, at the request of Lauw, met the appellant and told him that Lauw proposed to offer him a bungalow house at the Jalan Binchang housing development of Lauw & Sons (Pte) Ltd. The appellant agreed to accept the offer and asked which plot was to be offered to him and was told it was Plot 18, the biggest plot in the housing estate. Ong Keng Kok showed the appellant the type of house to be built on Plot 18. The appellant told Ong Keng Kok not to proceed with the construction as he wanted his own design and also told Ong Keng Kok not to register his name as the purchaser of plot 18 but to leave it as unsold. Eventually no new design was submitted for approval and construction work was commenced on the original design.

Sometime in October/November 1974 the appellant in a conversation with Ong Keng Kok expressed interest in visiting Jakarta. Ong Keng Kok conveyed to Lauw the appellant's desire to visit Jakarta and Lauw told Ong Keng Kok to invite the appellant and his family there where Lauw would look after them. In December 1974 when Ong Keng Kok was told by the appellant that he had a few days leave Ong Keng Kok invited him on Lauw's behalf to visit Jakarta with his family. The appellant accepted the invitation. Subsequently Ong Keng Kok told the appellant that Lauw had offered to pay the airfares of the appellant and his family and the appellant accepted the offer. On December 20, 1974 the appellant with five members of his family and a friend of the appellant's son flew to Jakarta accompanied by Ong Keng Kok. Lauw paid for the return air tickets which amounted to $3,523.

From all these facts a clear picture emerges. The appellant has since 1965 held ministerial office. Beginning from November 1970 until October 1974 he had personally interceded on many occasions with civil servants in various departments of government, and on one occasion with a fellow minister on behalf of a wealthy Indonesian citizen, Lauw or Lauw's company in connection with matters which these civil servants were dealing with. These intercessions were not made at the direct request of Lauw, whom the appellant did not know personally and had never met until 1973, but at the request of Ong Keng Kok, a friend whom he had known since school, the secretary and a director and the person in charge of the day to day running of the business of Lauw's company. The matters in which the appellant interceded were promptly considered and decided and in one instance in which the decision was an adverse one, the appellant interceded still further with eventually a favourable result. It is however correct to say that it appears to be the common practice for Members of Parliament to communicate direct with civil servants on behalf of members of the public within their respective constituencies. Indeed they are elected as representatives of the people.

During the period 1972 to the end of 1974 Lauw's company paid for the cost of new galvanised roofing for the appellant's house; Lauw and his company guaranteed to the extent of $300,000 the overdraft of the appellant's father with a bank, the overdraft facilities being for shares purchased by the appellant in the name of his father; Lauw's company offered and the appellant agreed to accept a bungalow house to be built by Lauw's company valued at $532,000 and lastly Lauw paid for the cost of seven return airfares to Jakarta when the appellant flew to Jakarta with his family for a holiday as Lauw's guest.

The question that falls for determination in this appeal is whether on those facts the appellant has been rightly convicted on the five amended charges of offences under section 6(a) of the Prevention of Corruption Act (Cap. 104). Section 6(a) provides: —

"6. If —

(a) any agent corruptly accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business:

he shall be guilty of an offence under this Act. . . ."

The expressions "agent", "gratification" and "principal" are defined in section 2 as follows: —

"2. In this Act, unless the context otherwise requires —

'agent' means any person employed by or acting for another, and includes . . . a person serving the Government. . . .

'gratification' includes —

(a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;

'principal' includes an employer . . . and in the case of a person serving the Government . . . includes the Government."

The other relevant section of the Act is section 8 which provides: —

"8. Where in any proceedings against a person for an offence under section 5 or 6 of this Act, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, such gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved."

Where a person is charged with an offence under section 6(a) and the prosecution seeks to rely on the presumption embodied in section 8, the burden lies

on the prosecution to prove the following factual ingredients of the offence, namely: —

(1) that a gratification was paid or given to or received by the accused;

(2) that at the time of the payment, gift or receipt he was in the employment of the Government or any department thereof or of a public body;

(3) that the payment, gift or receipt was from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body.

Upon proof of these three ingredients the existence of the fourth ingredient namely (4) that the gratification was paid or given or received corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of the Government or a department thereof or of a public body as the case may be, is to be presumed until the contrary is proved (see *Public Prosecutor* v. *Yuvaraj*).[1]

In the present case the prosecution at the trial relied on section 8 in respect of all the five original and amended charges. During the hearing of the appeal the learned Solicitor-General conceded that in respect of the amended fourth charge the conviction could not be supported as the evidence could not and did not establish that the appellant "accepted" the gratification therein alleged *i.e.* a bungalow house on Plot 18. It is submitted, however, that the court has power to and ought to amend the amended fourth charge to one of "agreeing to accept" and to substitute a conviction thereon.

Several contentions are raised by Mr. Newey on behalf of the appellant and I propose to deal with each of them separately.

A. *Agent.*

The contention is that the appellant is not an "agent" within the meaning of section 6(a) as defined in section 2 of the Act. The argument is as follows: — In each of the charges the appellant is described as "Minister of State". In law his status is that of a Minister because the Constitution of Singapore (Article 9) provides for the appointment of Ministers who, with the Prime Minister, constitute the Cabinet which shall have the general direction and control of the Government (Article 8) and because under the Presidential instrument of appointment he was appointed to be a Minister. Thus he is in law a member of and part of the Cabinet. Part I of the Constitution is headed "THE GOVERNMENT" and the scheme under Part I is that "the Government" consists of the President and the Cabinet, *i.e.* of natural persons, and is not a corporation sole. As the appellant is a Minister and as such a part of and one of the persons who collectively comprise the Government he cannot in law be "a person serving the Government" or be "a person in the employment of the Government" notwithstanding the fact that he receives remuneration in respect of his tenure of office as a Minister of State. The expression "a person serving the Government" in section 2 and the expression "a person in the employment of the Government" in section 8 have the same meaning and both expressions mean a servant or employee of the Government. It would be clearly wrong according to constitutional convention or inappropriate to describe a person holding ministerial office as a servant or employee of the Government. It follows that the appellant, as a Minister or Minister of State (as he is designated) is not an "agent" within the meaning of section 2 of the Act.

In my judgment it is unnecessary for the purpose of this appeal to decide the constitutional status of a Minister vis-a-vis the Government of Singapore nor is it necessary to decide whether or not on the true construction of the Constitution of Singapore the "Government of Singapore" is a corporation sole. In my judgment the question whether the appellant is an "agent" within the meaning of section 2 and for the purposes of section 6(a) of the Act has to be determined by construing the words of the sections and by applying the sections to the holder of the office of a Minister, appointed by the President on the advice of the Prime Minister, under the Constitution. The definition of "agent" in section 2 covers a person who is employed by another or who is acting for another or who is serving the Government. The appellant is a Minister but designated as a Minister of State. He was from 1965 to 1973 Minister of State in the Ministry of Defence and from 1972 Minister of State in the Ministry of the Environment. He receives the monthly salary of a Minister of State and has full-time responsibilities in the Government. In my judgment, it is clear that the appellant for the purposes of the Act is an "agent". When the words defining the expression "agent" are given their natural and ordinary meaning, they are apt to cover the appellant's position as a Minister who is designated to be Minister of State in the Minister of Defence or in the Ministry of the Environment. In the performance of his duties as a Minister of State in either Ministry he is clearly acting for the Government, it being necessary for the Government to exercise its functions through some human agency, and in receiving remuneration for the performance of his duties and the discharge of his responsibilities as a Minister of State he is clearly a person serving or employed by the Government and, accordingly, he falls within the definition of "agent" in the Act.

B. *The Statutory Presumption under section 8 of the Act.*

Two contentions are raised on behalf of the appellant. First, it is contended that section 8 does not apply because the appellant is not a person in the employment of the Government. For the reasons indicated earlier this contention fails. The second contention is that the gratifications were not paid or given by or received from a person or agent of a person who had or sought to have any "dealing" with the Government or any department thereof. It is submitted that the expression "dealing" ought to be construed to mean a contract or contractual relationship with the Government and there was no evidence that Lauw or his company had or sought to have any contract or contractual relationship with the Government. The prosecution case which was accepted by the trial court was that Lauw or his

company had, at the material dates, problems concerned with administration with some department or other of the Government.

It is to be observed that the Act when it was enacted as Ordinance No. 39 of 1960 replaced and repealed the Prevention of Corruption Ordinance which was enacted as Ordinance No. 41 of 1937. In the 1937 Ordinance the presumption section (section 5) raised the presumption where the gratification was from a person or agent of a person "holding or seeking to obtain a contract" from the Government or any department thereof. In my judgment the intention of the legislature in substituting "dealing" for "contract" is manifestly to widen the scope of the presumption having regard to the long title of the Act — "An Act to provide for the more effectual prevention of corruption" — and having regard to the difficulty of proving corruption by a public servant in the discharge of his public duties. In my judgment, the expression "any dealing with the Government or any department thereof" means "any matter with the Government or any department thereof".

On the facts there can be no reasonable doubt that the gratifications which formed the subject matter of the 1st, 2nd, 3rd and 5th amended charges were paid or given by or received from a person or agent of a person who had at the material dates dealings with one or more departments of the Government.

C. *If section 8 applies has appellant discharged the Burden of Proof.*

It is contended on behalf of the appellant that the trial judge should have found that the appellant had discharged the burden of proof which lay on him to prove that the gratifications have not been accepted by him corruptly as rewards for the acts done in relation to the affairs or business of the Government. It is submitted that all the acts relied on by the prosecution were in truth commonplace, harmless acts of the kind the appellant as a member of Parliament was doing all the time for all sorts of people and that the doing of the acts alleged in the charges did not amount to any wrongdoing of the kind which can come within the meaning of the expression "corruptly" in the Act. In my opinion the fact that the evidence showed that the acts done by the appellant may well have been commonplace acts which members of Parliament here ordinarily do for members of the public who seek their assistance is immaterial. The real question is, and on this the onus is on the appellant to prove the contrary, did the appellant corruptly accept the gratifications as a reward for the acts he had done. This is a question of fact and in my judgment there was ample evidence to support the trial judge's finding that the appellant had failed, on a balance of probabilities, to prove that he had not accepted the gratifications corruptly. In my judgment, on the evidence and having regard to the findings of fact of the trial judge, the appellant has failed to show that he had legitimate reasons for accepting the gratifications set out in the 1st, 2nd, 3rd and 5th amended charges. One of the mischiefs aimed at by the Act was to prevent a public officer or public servant from accepting gifts in cash or in kind from a member of the public except in circumstances in which he will be able to show clearly that he has legitimate reasons for so doing [see *Public Prosecutor* v. *Yuvaraj, supra*].

D. *Acts done must be "in relation to the principal's affairs or business".*

It is contended that an agent cannot be convicted of an offence under section 6(a) of the Act unless the act done is within the general scope of his authority and that the trial judge was wrong in holding that the representations made by the appellant were in relation to the principal's affairs or business. Mr. Newey concedes that the words "in relation to the principal's affairs or business" must be given a wide construction and that it is a matter of degree whether the acts alleged fall within these words. It is thus a question of fact and in my judgment the appellant's acts were clearly in relation to the affairs or business of the Government.

E. *Conviction on Amended 4th Charge clearly wrong.*

In the original 4th Charge the appellant is charged that he "did corruptly agree to accept" a gratification, to wit, a two-storey bungalow house and land, but at the close of the prosecution case the trial judge amended the charge to "did corruptly accept". The evidence was that the house was only partly built and the land had not been conveyed or legally transferred by the developers to the appellant nor had he been given possession of it. On those facts it is contended by the appellant and conceded by the respondent that the prosecution had clearly failed to prove that the appellant had "accepted" the house and land and, accordingly, the conviction on the Amended 4th Charge ought to be set aside.

Mr. Ghows, Solicitor-General, for the respondent, invites the court to act under section 246 of the Criminal Procedure Code and substitute a conviction on the original 4th Charge. The relevant provisions of section 246 read as follows: —

> "246. At the hearing of the appeal the court ... may —
>
> (b) in an appeal from a conviction —
>
> (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction or committed for trial; or
>
> (ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence; or
>
> (iii) with or without the reduction or enhancement and with or without altering the finding, alter the nature of the sentence."

The powers of this court sitting as an appellate court are statutory and clearly section 246 gives no power on appeal to alter or amend a charge and accordingly the conviction and sentence on the Amended 4th Charge cannot stand.

F. *Particulars.*

It is contended on behalf of the appellant that the charges are defective for lack of essential particulars and that the defence was misled resulting in a miscarriage of justice. Mr. Newey submits that for a charge under section 6(a) of the Act the principal must be named in the charge and failure to do so renders the charge defective. While it is obviously

desirable that in a charge under section 6(a) the principal should be named in the charge, I am of the opinion that section 155 of the Criminal Procedure Code applies on the facts of this case. Section 155 of the Criminal Procedure Code provides as follows: —

"155. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by that error or omission."

In my judgment it is clear beyond any doubt that the appellant was not, at any stage, in fact misled by the omission to state the name of his principal in the charges.

It is also submitted that the failure of the prosecution to give particulars of the "representations" alleged to have been made prejudiced the defence. For similar reasons I am of the opinion that this submission is also without real substance.

G. *Sentence.*

Mr. Newey, in his submission that the sentences were out of all proportion to the offences of which the appellant was convicted, stresses that no harm was suffered by the Government, that no wrong decisions were taken as a result of the appellant's acts, that the appellant gained very little and that in fact the only real benefit the appellant obtained was the cost of seven return air tickets to Jakarta. It is also submitted that it was not a case of corruption bargains being struck but a case where the appellant succumbed to Ong Keng Kok's wiles and became willing to accept some benefits. While accepting these submissions as correct on the facts, the real gravamen, so far as the appellant is concerned, is the fact that the offences were committed by him while he held ministerial office. In respect of the conviction on each of the four charges, which convictions for the reasons I have earlier set out I uphold, the appellant was sentenced to a term of six months imprisonment by the trial judge with consecutive sentences in respect of two charges making a total of eighteen months imprisonment. In my judgment the sentences as imposed by the trial judge were manifestly not excessive.

Accordingly, the appeals against the convictions and sentences in respect of the Amended 1st, 2nd, 3rd and 5th Charges are dismissed and the appeal against the conviction in respect of the Amended 4th Charge is allowed.

Order accordingly.

Solicitors: *David Marshall.*

MALAYSIAN REPORTS

LOH KON FAH v. LEE MOY LAN

[F.C. (Gill C.J. (Malaya), Ali and Ong Hock Sim F.JJ.) June 14, 1976]

[Ipoh — Federal Court Civil Appeal No. 61 of 1975]

Family Law — Guardianship of Infants — Discretion of trial judge — Whether exercised rightly — Powers and duties of appellate court in reviewing decision by court in the exercise of its discretion — Guardianship of Infants Act, 1961.

In this case the learned trial judge after hearing the parties, gave the respondent, the mother, custody of her three infant children with unrestricted access to them at all times by the appellant as the father (*ante* p. 88). In 1970 the respondent and the children by mutual agreement had moved to Singapore where they have lived ever since. The appellant visited the family regularly till 1973 when he stopped visiting them entirely. The appellant wanted his wife and children to return to Malaya but the respondent refused. In 1974 the appellant commenced proceedings in Ipoh for the custody of his children. The learned trial judge refused his application and he appealed to the Federal Court.

Held, (Gill C.J. and Ali F.J., Ong Hock Sim F.J. dissenting): having regard to the evidence before him it could not be said that the learned trial judge had wrongly exercised his discretion. The learned judge was quite right in taking the view that so long as the marriage subsisted between the parties and there were no obstacles in the way of the appellant visiting his children at any time the mother should have the custody. It was not possible in this case to say that the learned judge had either given weight to irrelevant or unproven matters or omitted to take into account matters that were relevant. It could not be said therefore that the decision of the learned judge was improper, unjust or wrong.

Cases referred to:-

(1) *Charles Osenton & Co.* v. *Johnson* [1942] A.C. 130, 138.
(2) *Evans* v. *Bartlam* [1937] A.C. 473, 486.
(3) *Gardner* v. *Jay* (1885) 29 Ch. D. 50, 58.
(4) *Ward* v. *James* [1966] 1 Q.B. 273, 293.
(5) *Hennall* v. *Ranaboldo* [1963] 1 W.L.R. 1391.
(6) *Grimshaw* v. *Dunbar* [1937] 1 Q.B. 408.
(7) *In re O (Infants)* [1971] 1 Ch. 748, 755.
(8) *Re F.* [1976] 1 All E.R. 417.
(9) *Blunt* v. *Blunt* [1943] A.C. 517, 526.
(10) *Re T. (Infants)* [1968] Ch. D. 704.
(11) *Re L (Infants)* [1962] 3 All E.R. 1.
(12) *Re F (an infant)* [1969] 2 All E.R. 766.
(13) *Sim Hong Boon* v. *Lois Joan Sim* [1973] 1 M.L.J. 1 at p. 3.

FEDERAL COURT.

Lim Kean Chye (*P. Leow* (Miss) with him) for the appellant.

Liew Choy-Hung (Miss) for the respondent.

Gill C.J. (Malaya): This was an appeal from an order of Hashim Yeop Sani J. giving the respondent, as the mother, custody of her three infant children with unrestricted access to them at all times by the appellant as the father. We dismissed the appeal (with Ong Hock Sim F.J. dissenting) and stated that we would give our reasons later. I now proceed to state my reasons.

As the facts of the case are set out with the greatest care and clarity in the learned judge's judgment, and there has been no substantial criticism of his findings of fact, based on the evidence of the